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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 IVAN RODRIGUEZ RIVERA,

11 Plaintiff,

12 v.

13 DR. ARANAS, *et al.*,

14 Defendants.
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Case No. 2:09-CV-01692-KJD-RJJ

ORDER

16 Presently before the Court is Defendants' Motion to Dismiss and for Summary Judgment
17 (#14). Though the time for doing so has passed, Plaintiff has failed to file a response in opposition
18 despite the Court warning (#17) Plaintiff that failure to respond would result in his complaint being
19 dismissed and giving Plaintiff additional time due to his residence in Mexico. Having read and
20 considered the motion on the merits, and in accordance with Local Rule 7-2(d), the Court grants
21 Defendants' motion for failure to exhaust his administrative remedies and failure to raise genuine
22 issues of material fact demonstrating that prison officials were deliberately indifferent to his serious
23 medical needs.

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1 I. Analysis

2 The Prison Litigation Reform Act of 1994 requires that a prisoner exhaust any and all
3 administrative remedies before filing a case in federal court. See Woodford v. Ngo, 548 U.S. 81, 85,
4 126 S. Ct. 2378, 2386 (2006). “Proper exhaustion demands compliance with an agency’s procedural
5 rules because no adjudicative system can function effectively without imposing some orderly
6 structure on the course of its proceedings.” Id. at 90-91. Prisoners must complete the prison’s
7 administrative process, regardless of the relief sought by the prisoner and regardless of the relief
8 offered by the process, as long as the administrative process can provide some sort of relief on the
9 complaint stated. See Booth v. Churner, 532 U.S. 731, 741 (2001). “All ‘available’ remedies must
10 be exhausted[.]” Porter v. Nussle, 534 U.S. 516, 524 (2002). “[Proper exhaustion] means...a prisoner
11 must complete the administrative review process in accordance with the applicable procedural rules,
12 including deadlines, as a precondition to bringing suit in federal court.” Ngo, 548 U.S. at 85-6.

13 A motion to dismiss for failure to exhaust nonjudicial remedies is treated as an unenumerated
14 12(b) motion. See Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003). In deciding a motion to
15 dismiss for a failure to exhaust nonjudicial remedies, the court may look beyond the pleadings and
16 decide disputed issues of fact. See id. at 1119-20, citing Ritza v. Int’l Longshoremen’s &
17 Warehousemen’s Union, 837 F.2d 365, 369 (9th Cir. 1988). If the district court concludes that the
18 prisoner has not exhausted nonjudicial remedies, the proper remedy is dismissal of the claim without
19 prejudice. See id. at 368 n.3 (1988).

20 In this action for deliberate indifference to his serious medical needs, Plaintiff filed ten
21 grievances related to his testicular pain. However, none of the grievances asserted that Plaintiff was
22 denied treatment. Furthermore, he never filed a grievance regarding Dr. Gedney, who only saw
23 Plaintiff one time. Only one of the ten grievances was fully exhausted, i.e. appealed through each
24 step to the second level. In the course of Plaintiff’s appeals of that grievance, he was informed that
25 he could obtain the relief that he sought, to see a specialist, by requesting that he be seen by a
26 specialist through an institutional doctor. Plaintiff, subsequently, did request to be seen by a

1 specialist through an institutional doctor. His request was granted and he was seen by a specialist.
2 To the extent that Plaintiff asserts that this process violated his Eighth Amendment rights, he has
3 failed to raise any genuine issues of fact, that if resolved in his favor, would demonstrate that prison
4 officials were deliberately indifferent.

5 Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison medical
6 treatment, an inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner,
7 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104(1976)). The
8 Ninth Circuit employs a two-part test of deliberate indifference requiring a plaintiff to (1) first show
9 a “serious medical need” by demonstrating that “failure to treat a prisoner’s condition could result in
10 further significant injury or the unnecessary and wanton infliction of pain,” and (2) the defendant’s
11 response to the need was deliberately indifferent. McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th
12 Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir.
13 1997) (en banc) (citing Estelle 429 U.S. at 104) (internal quotations removed). A plaintiff may
14 satisfy the second prong by demonstrating (1) the prison official engaged in a purposeful act or
15 failure to respond to a prisoner’s pain or possible medical need, and (2) harm caused by the
16 indifference. Jett, 439 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060.) Indifference “may appear
17 when prison officials deny, delay or intentionally interfere with medical treatment, or it may be
18 shown by the way in which prison physicians provide medical care.” McGuckin, 974 F.2d at 1060.
19 In this case, though Plaintiff had a serious medical need, Plaintiff’s need was not ignored, nor
20 neglected. When he requested medical care, i.e. to be seen by a specialist, from the party authorized
21 to grant his request, his need was met. Accordingly, Plaintiff has not shown that Defendants’ were
22 deliberately indifferent. Accordingly, Defendants’ motion for summary judgment is granted.

23 II. Conclusion

24 Accordingly, IT IS HEREBY ORDERED that Defendants’ Motion to Dismiss and for
25 Summary Judgment (#14) is **GRANTED**;

1 IT IS FURTHER ORDERED that the Clerk of the Court enter **JUDGMENT** for Defendants
2 and against Plaintiff.

3 DATED this 4th day of April 2011.
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Kent J. Dawson
United States District Judge